

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICKEY R. THOMAS,

Plaintiff,

vs.

ROBERT MCDONALD, Secretary of
Veterans Affairs;

Defendant.

8:15CV213

MEMORANDUM ORDER

Before the court is Defendant's Motion to Strike Plaintiff's Reply. ([Filing No. 21](#)). For the following reasons, the motion will be granted.

Plaintiff filed his complaint against the defendant on June 11, 2015. ([Filing No. 1](#)). On February 18, 2016, Defendant filed his answer. ([Filing No. 16](#)). Defendant did not file a counterclaim against the plaintiff. ([Filing No. 16](#)). And Defendant did not file a motion to dismiss. On March 15, 2016, Plaintiff filed a Reply to Defendant's answer without order of the court or consent of the Defendant. ([Filing No. 20](#)). Defendant now seeks to strike Plaintiff's reply in the current motion.

[Rule 7](#) of the Federal Rules of Civil Procedure describes the pleadings allowed. [Fed. R. Civ. P. 7\(a\)](#). Generally, the permitted pleadings include a complaint or an answer; whether the answer is in response to an original complaint or a counterclaim. Under [Rule 7\(a\)\(7\)](#), the court may sua sponte or on motion, order a party to file a reply. However, a party cannot file a reply to an answer absent a court order.

In general, a reply is not filed absent a clear showing of necessity or extraordinary and compelling circumstances. 2 James Wm. Moore, et al., *Moore's Federal Practice* § 7.02[7][b] (2015). Replies to affirmative defenses are not generally permitted. [See Johnson v. Metropolitan Life Ins. Co., 4 F.R.D. 294, 295 \(M.D. Pa. 1945\)](#); [Cange v.](#)

Stotler & Co., 913 F.2d 1204, 1209 (7th Cir. 1990); Federal Deposit Ins. Corp. v. First Nat'l Finance Co., 587 F.2d 1009, 1012 (9th Cir. 1978). An unauthorized reply should be treated as a nullity by the court. Moore's Federal Practice § 7.02[7][b].

In this case, the government's answer did not contain a counterclaim, the plaintiff did not seek permission to file a reply, and the court did not order Plaintiff to file a reply to the answer. Additionally, the reply filed by Plaintiff includes no showing of necessity or of extraordinary circumstances: It merely seeks to address defenses and answers made by the defendant. In short, Plaintiff's reply was not properly filed under Rule 7(a) and will be stricken from the record. Plaintiff may file a response if and when the defendant files a motion to dismiss the complaint in accordance with the federal rules.

IT IS ORDERED:

- 1) Defendant's Motion to Strike, ([filing no. 21](#)), is granted.
- 2) Plaintiff's Reply, ([filing no. 20](#)), is stricken from the record.

Dated this 25th day of March, 2016

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge